

MINUTES HEARING OFFICER SEPTEMBER 4, 2018

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

STUDY SESSION 4:30 PM

Present:

Vanessa MacDonald, Hearing Officer
Steve Abrahamson, Principal Planner
Lee Jimenez, Senior Planner
Dalton Guerra, Planner I
Brittainy Nelson, Administrative Assistant I

There were 0 interested citizens present at the study session.

- Staff and Hearing Officer discussed overview of the scheduled cases

REGULAR SESSION 5:00 PM

Present:

There were 4 interested citizens present at the regular session.

Meeting convened at 5:00 PM and was called to order by Vanessa MacDonald. They stated that anyone wishing to appeal a decision made by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) calendar days, by September 18, 2018 at 3:00 PM, to the Community Development Department.

1. The following was noted:

- **Agenda Item No. 1**

Hearing Officer Minutes

Vanessa MacDonald, Hearing Officer, stated that the August 20, 2018 Hearing Officer Minutes had been reviewed and were approved.

2. Request a Use Permit to allow a vocational school (holistic healthcare) for **SOUTHWEST INSTITUTE OF HEALING ARTS**, located at 1538 East Southern Avenue. The applicant is K.C. Miller. (PL180217)

Lee Jimenez, Senior Planner, gave the following presentation:

- Southwest Institute of Healing Arts seeks to operate an accredited and state-approved, 2-year vocational post-secondary educational institution within commercial space previously occupied by a charter school in the South Palms Center, located on the northwest corner of East Southern Avenue and South McClintock Drive in the PCC-2, Planned Commercial Center General District.
- The school is privately owned and has been operating for 26 years in Scottsdale and Tempe. The existing Tempe location at 1100 East Apache Boulevard is under redevelopment and requires the school to relocate their operation.
- The school serves a variety of students, both online and on-campus, who seek training in various methods of holistic healing including nutrition, massage, energy work, hypnotherapy, life-coaching, herbalism, and others.
- Classes are offered throughout the day and evening during the week and weekends. The busiest times will take place in the evening hours during the week where 60 to 70 students are expected to be on-campus. Weekend attendance may increase to 100 students; however, staff levels are lower on weekends than during the week. The school will employ 60 people.
- To date, no public input has been received by staff.
- Based on the information provided by the applicant, the public input received, and the analysis provided in the staff report, staff supports approval of the requested use permit and believes the request meets the required approval criteria and will conform to the recommended conditions in the staff report.

Ms. MacDonald stated that for the conditions of approval she would like to go over number 5 and 6 with Mr. Jimenez for a brief minute.

Mr. Jimenez stated that previously the site was in a shared parking module study. Which was previously occupied by a charter school which had a different peak demand of parking hours. The school was over at 3pm however the vocational schools continue into the evening hours. The approval of the parking analysis was based on the mix of parking tenants at the site. Since there is a new mix of tenants and uses the shared parking module needs to be updated. With that in mind Mr. Jimenez is helping them get into the suite as quickly as possible which is giving them time to figure out the parking situation within a year after they began operation.

Ms. MacDonald wanted to clarify if we are imposing that condition on the user or the property manager.

Mr. Jimenez stated that he stated the condition for either the property manager or the tenant.

Ms. MacDonald asked if we should change the wording on the condition to return to the Hearing Officer or other relevant public decision-making body since the hearing officer will more than likely not be hearing this type of use permit to come.

Mr. Abraham said yes that is correct.

Ms. MacDonald stated to add language that states or applicable decision-making body. Which She believes will be the DRC.

Mr. Jimenez agreed with the wording and said that he will change the wording in the condition to what will fit Ms. MacDonald request.

Ms. MacDonald invited the applicant up and asked if she had anything to add to how Mr. Jimenez presented her case.

Ms. Miller stated no she does not have anything to add and that she appreciates the timeliness in which the case is handled because they must be out of the building tomorrow.

Ms. MacDonald asked if she understands and agrees to follow the conditions of approval in the staff report.

Ms. Miller said yes.

Ms. MacDonald asked if there was any member of the public here that would like to speak on agenda item number

12. No show of hands or cards present.

Ms. MacDonald noted that this request meets the criteria of the Zoning and Development Code, Section 6-309 D, Use Permit Criteria (in italics):

1. *Any significant increase in vehicular or pedestrian traffic*; Ms. MacDonald stated that this would not create an increase in vehicular or pedestrian traffic.

2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions*; Ms. MacDonald did not believe that the project would create a nuisance from any of the items listed.

3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan*; Ms. MacDonald did not believe that this project would deteriorate the neighborhood or downgrade property values

4. *Compatibility with existing surrounding structures and uses*; Ms. MacDonald did believe that the structure would be compatible with existing structures. She also noted that other similar projects have taken place in the neighborhood setting a precedent.

5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public*; Ms. MacDonald did believe that the property owners would have adequate control of behavior.

DECISION:

Ms. MacDonald Approved the Use Permit (ZUP180087) to allow a vocational school (holistic healthcare), **SOUTHWEST INSTITUTE OF HEALING ARTS**, located at 1538 East Southern Avenue subject to the assigned Conditions of Approval as follows:

1. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
2. All required Federal, State, County, and Municipal permits, licenses, and clearances shall be obtained, or the Use Permit is void.
3. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
4. Any intensification or expansion of use shall require a new use permit.
5. Update the Shared Parking Analysis for Southern Palms Shopping Center (administratively approved by the Community Development Department on September 27, 2013) by processing a Shared Parking Application to convert the charter school use to a vocational school use. Modifications to the standard shared parking model are permitted with a professional Parking Analysis and Management Study. The Shared Parking Application is subject to an administrative review and approval (including applicable fees) by the Community Development Department.

6. Return to the Hearing Officer **OR APPLICABLE DECISION-MAKING BODY** for a review of compliance with assigned conditions of approval within 12 months. The timing for the 12-month review period to commence begins when the business is in full operation. Advise Community Development staff when in full operation. If the full business activity is not initiated within 12 months, the use permit will lapse. **MODIFIED BY HEARING OFFICER.**
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3. Request abatement of public nuisance items at the **BANKHEAD PROPERTY** located at 1736 S. El Camino Drive. The applicant is the City of Tempe (**CE183409**).

Ms. Julie Scofield, Code Inspector, gave the following presentation:

- Requesting abatement to clean up items stored in front of property
- On going issue since June
- Has had previous abatements in the past years
- Several notices have been sent and citations given
- Last abatement that was approved was in June of this year

Ms. MacDonald said that she agrees with the assessment of the property.

Ms. MacDonald asked if there was a member of the public or the property owner here that would like to speak on agenda number 2.

Ms. MacDonald Approved the open 180-day abatement.

4. Request abatement of public nuisance items at the **STODDARD PROPERTY** located at 2015 S. La Rosa Drive. The applicant is the City of Tempe (**CE181235**).

Ms. Julie Scofield, Code Inspector, gave the following presentation:

- Requesting abatement to have the palm tree in the backyard trim
- The owner has received several notices and citations
- They have gone to court and the owner was found responsible by the judge

Ms. MacDonald asked if this has gone back for a number of months.

Ms. Scofield said since March.

Ms. MacDonald said that she agrees with the assortment of the property.

Ms. MacDonald asked if there was a member of the public or the property owner here that would like to speak on agenda number 3.

Ms. MacDonald asked if Ms. Scofield was requesting a 180 day abatement or just a one-time clean up.

Ms. Scofield said that she is requesting a one time.

Ms. MacDonald approved the abatement.

5. Request abatement of public nuisance items at the **JONES PROPERTY** located at 1527 E. Newport Drive. The applicant is the City of Tempe **(CE181183)**.

Ms. Julie Scofield, Code Inspector, gave the following presentation:

- This is a town home with a small patio on the backside that is full of items boxes, trash, dog feces, and clothing items
- The case has been open since March

Ms. MacDonald said that she agrees with Ms. Scofield assessment of the property not only for health standards but safety standards as well it really needs to be taken care of.

Ms. MacDonald asked if there was a member of the public or the property owner here that would like to speak on agenda number 4. No show of hands or cards present.

Ms. MacDonald Approved the open 180-day abatement.

6. Request abatement of public nuisance items at the **BECK PROPERTY** located at 606 E. Carson Drive. The applicant is the City of Tempe **(CE182044)**.

Ms. Julie Scofield, Code Inspector, gave the following presentation:

- Asking for the removal of inoperable unregistered vehicles
- This has been an issue since April
- The vehicles do have a temp tag on the back window
- One of the vehicles have a flat tire and the permit will expire on the 15th
- Which is in less than two weeks worried this will become an issue again
- Requesting 180-day abatement

Ms. MacDonald stated that if they would get together and get the vehicles registered and the tire fix with in the two-week period the abatement could go away.

Ms. MacDonald asked if there was a member of the public or the property owner here that would like to speak on agenda number 5. No show of hands or cards present.

Ms. MacDonald Approved the open 180-day abatement.

7. Request abatement of public nuisance items at the **BUKHARI PROPERTY** located at 2151 E. Caroline Lane. The applicant is the City of Tempe (**CE183578**).

Mr. Jack Scofield, Code Inspector, gave the following presentation:

- Deteriorating landscaping and Deteriorating pool
- Notifications were mailed out to the property owner discovered that this property is under foreclosure
- Was in contact with the property management company for the bank however no correction has been made
- Ongoing since beginning of June

Ms. MacDonald stated that she was not able to drive by the property and asked Mr. Scofield what were his most recent findings.

Mr. Scofield said that in the front yard the weeds were cut down however the violations are in the back yard.

Ms. MacDonald asked if there was a member of the public or the property owner here that would like to speak on agenda number 6. No show of hands or cards present.

Ms. MacDonald Approved the open 180-day abatement.

8. Request abatement of public nuisance items at the **R & K TEMPE PROPERTY** located at 1117 E. Spence Avenue. The applicant is the City of Tempe (**CE181525**).

Mr. Michael Glab, Code Inspector, gave the following presentation:

- Compliant was for junk and debris stored on the property
- Been in contact with property manager at several points assured that the issues would be addressed
- Additional time was granted with no results
- Attracting squatters on the property

Ms. MacDonald asked if there was any change on the property since Friday afternoon.

Mr. Glad said no, there is still debris piled in the backyard and landscape and holes in the fence that are attracting transits for the police department to deal with.

Ms. MacDonald asked if there was a member of the public or the property owner here that would like to speak on agenda number 7. No show of hands or cards present.

Ms. MacDonald Approved the open 180-day abatement.

9. Request abatement of public nuisance items at the **HALL PROPERTY** located at 1314 S. Martin Lane. The applicant is the City of Tempe (**CE180547**).

Mr. Michael Glab, Code Inspector, gave the following presentation:

- Jan of this year office received complaint of several different nuisance at the property
- Was in contact with the tenant at the property
- Eventually got in contact with the owner
- Several notices were mailed and posted to the structure
- Some the items were brought into code, but the junk and debris are still unaddressed.
- Property owner was cited

Mr. Glab informed Ms. MacDonald that he had photos from today at 2pm showing the current state of the property

Ms. MacDonald requested that he place one of them for showing

Mr. Glab clarified that the request is for 180day in case the property owner set more things outside again.

Ms. MacDonald agreed that there have not been any changes on the property

Ms. MacDonald asked if there was a member of the public or the property owner here that would like to speak on agenda number 8. No show of hands or cards present.

Ms. MacDonald Approved the open 180-day abatement.

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10. Request abatement of public nuisance items at the **QIK STOP / NGUYEN PROPERTY** located at 3233 S. 48TH Street. The applicant is the City of Tempe (**CM180548**).

Ms. Amy Wozniak, Commercial Code Inspector, gave the following presentation:

- Mailed violations notices to the property owner at the known address
- Received no response
- Received no corresponded with the property owner what so ever
- Notice was mailed and posted on site
- Violations for the property are uncultivated grass and weeds, excessive trash & debris, graffiti
- Has become a haven for the homeless
- Has been in abatement 3 times in the past for the same type of violations
- Visited property today and still no change

Ms. MacDonald stated that she believes she was the Hearing officer at one of the abatement hearings. Agrees with the assessment of the property and we are not only talking about aesthetic issues but health and safety and the haven for the homeless is not a good thing for our City to have.

Ms. MacDonald asked if there was a member of the public or the property owner here that would like to speak on agenda number 9. No show of hands or cards present.

Ms. MacDonald Approved the open 180-day abatement.

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11. Request abatement of public nuisance items at the **HALE PROPERTY** located at 1849 E. Hayden Lane. The applicant is the City of Tempe (**CE153327**).

Mr. Hector Heredia Jr, Code Inspector, gave the following presentation:

- The city has a cordial relationship with the owner
- There are new developments that have come in today in regard to submitting paperwork to build on the property
- After having an in-depth conversation with the department head, it was agreed upon that they would have the 180day open abatement approved with the condition that we would allow the property owner an extra month to see rather or not he can comply with the request to clear the entire property or noticing that signification progress by some type of construction taking place

Ms. MacDonald asked what the property owner is proposing to build on the property.

Mr. Heredia Jr stated that he is seeking to build a residence on the property.

Ms. MacDonald wanted clarification that Mr. Heredia is asking to wave the 14day or extend it.

Mr. Heredia Jr stated that he would like to extend the time because it is an extensive job and he wants to extend the positive relationship with the property owner and see if he can pull together all the necessary tools needed to confirm with our request.

Ms. MacDonald stated it is a very large abatement request from a dollar stand point and she understands why Mr. Heredia Jr is working with the applicant.

Ms. MacDonald stated that her hesitation is because there may be months before there is any visible construction is done.

Mr. Heredia Jr stated that what he is asking for is progress to be made at the October 16th due date if he is not seeing that the material on the empty lot is either organized or ready for immediate use or if the permits are not accepted then he will be moving forward with the abatement as necessary clearing the lot of all the violations.

Ms. MacDonald asked if the property owner was here and invited him up to speak on his behalf.

Mr. Hale said that he is trying to clean up the area and that he has applied for the building permit before and he did not get it and need to make corrections to it and he is ready to go and has gone as far as obtaining a construction loan and the wheels are in motion and he is trying to keep up with the city needs.

Ms. MacDonald stated that she is glad that he is here this afternoon and that he is wanting to avoid the abatement and keep the dialogue open so that Mr. Heredia Jr can avoid taking the steps to abate the property.

Mr. Hales stated that he is tired of it, so he is going to do something to the property rather quickly.

Mr. Heredia Jr stated that Mr. Hales has been found responsible on two different occasions on citations that were issued which is why Mr. Heredia Jr is pushing for the cooperation between them so that they can get the property cleared and eliminate some stress while complying with the request in the nuisance.

Ms. MacDonald asked if there was a member of the public that would like to speak on agenda number 10.

Ms. MacDonald Approved the open 180-day abatement.

12. Request abatement of public nuisance items at the **STEFANIAK PROPERTY** located at 1849 E. Harvard Drive. The applicant is the City of Tempe **(CE183064)**.

Ms. Ashley Nichols, Code Inspector, gave the following presentation:

- Deteriorating landscape in the front and the back of the property
- Vehicle in the driveway with expired plates
- A broken window in the back of the property
- It was discovered that the property owner was deceased after the first notice and no next of kin to come forward and none discovered

Ms. MacDonald stated that she has noticed from the staff report that she has abated this property before.

Ms. MacDonald stated that there is no next of kin, so the property is sitting vacant and falls into disrepair while probate is going on presumably.

Ms. Nichols stated that no one has come forward and that they have not discovered any one and that everything was in the home owners name with no Trust or Will.

Ms. Nicholas stated that she believes he passed away last spring.

Ms. MacDonald stated that this is a cautionary tell to have an estate will and planning.

Ms. MacDonald stated that she agrees with the property assessment and that this has been done so many times before.

Ms. MacDonald stated that clearly the property owner is not present today and that she does not believe there is any member of the public wanting to speak on agenda number 11.

Ms. MacDonald Approved the open 180-day abatement.

13. Request two (2) Use Permits to allow a vehicle-based service (shuttle dispatch) in a CSS zone and to exceed one hundred twenty-five (125) percent of the minimum required spaces for **NORTH AMERICA CAR SERVICE**, located at 2309 East University Drive. The applicant is Mark Lymer of Marc Architecture. **(PL180230)**

Dalton Guerra, Planner I, gave the following presentation:

- North America Car Service is located south of East University Drive and east North Price Road in the CSS, Commercial Shopping and Services District.
- North America Car Service is a shuttle dispatch business that transports people to and from the airport. There is no customer drop-off or pick-up on site, only staging of the shuttle fleet. Hours of operation are 24 hours/day and 7 days/week
- To date, staff has not received any public input.
- Based on the information provided by the applicant, the public input received, and the analysis provided in the staff report, staff supports this request and believes that the application meets the required criteria and will conform to the conditions provided in the staff report.

Ms. MacDonald asked for clarification that condition number 7 to 10 from the staff report where we are limiting the number of spaces to 15 parking only with the designated spaces also if number 8 and 9 are the same.

Mr. Guerra clarified that one speaks to the amount of parking spaces and one speaks to the number of vehicles that are allowed to be parked on the premise.

Mr. Guerra clarifies that condition number 7 is for the use permit for the parking and condition number 9 is for use permit for the use.

Ms. MacDonald asked for the applicant to step forward.

Ms. MacDonald asked if the applicant understands and agrees to follow the conditions of approval in the staff report.

Mr. Lymer said yes, we revised our site plan to meet the conditions.

Mr. Lymer said that there is a little confusing because there are 10 existing parking spaces and they are adding another 15 to it so that makes 25 total.

Mr. Guerra stated that we are only allowing you to have 15 new spaces. That he is not taking into account the 10 existing spaces.

Ms. MacDonald asked for clarification stating that we are giving them 15 new spaces, but we are limiting the number of vehicles to 15.

Mr. Guerra stated that is correct. That the 10 original spaces were for customer parking at the convenient store which is the primary use at the site, so they are trying to make sure that there are adequate spaces for the customers on site as well as parking the fleet.

Mr. Lymer clarified that the use permit will be for the shuttles to pick up the people at the airport and take them to the hotels or resorts and that they will not be at the place of business at all.

Ms. MacDonald asked if he understood the conditions and agree to them.

Mr. Lymer stated that he was still confused and there are 10 existing parking spaces and now they have a slightly more intense use he also said that the extra spaces are for the 4 or 5 of the vehicles that they use, and the rest are for the employees that provide driving service and they park on site. He also stated that there is one large space on the side that was given a long parking space for a coach.

Mr. Guerra said that he would like to clarify that if we allow any more than 15 extra spaces for the fleet then there would be a risk of there not being enough required parking for the existing gas station.

Ms. MacDonald stated that since you have not given me a direct answer then you are ok with the conditions of approval.

Mr. Lymer stated yes.

Ms. MacDonald asked if there was a member of the public here that would like to speak on agenda item number 13.

Ms. MacDonald noted that this request meets the criteria of the Zoning and Development Code, Section 6-309 D, Use Permit Criteria (in italics):

1. *Any significant increase in vehicular or pedestrian traffic*; Ms. MacDonald stated that this would not create an increase in vehicular or pedestrian traffic.
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions*; Ms. MacDonald did not believe that the project would create a nuisance from any of the items listed.
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan*; Ms. MacDonald did not believe that this project would deteriorate the neighborhood or downgrade property values
4. *Compatibility with existing surrounding structures and uses*; Ms. MacDonald did believe that the structure would be compatible with existing structures. She also noted that other similar projects have taken place in the neighborhood setting a precedent.
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public*; Ms. MacDonald did believe that the property owners would have adequate control of behavior.

DECISION:

Ms. MacDonald Approved the Use Permit (ZUP180085 / ZUP180086) to exceed the minimum parking requirements by one hundred twenty-five (125) percent and to allow a vehicle-based service (shuttle dispatch), **NORTH AMERICA CAR SERVICE**, located at 2309 East University Drive subject to the assigned Conditions of Approval as follows:

1. The Use Permits are valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.
2. The Use Permits are valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. All required Federal, State, County, and Municipal permits, licenses, and clearances shall be obtained or the Use Permit is void.
4. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
5. Any intensification or expansion of use shall require a new Use Permit.
6. A Development Plan Review and required Building Permits shall be obtained for the proposed site modifications prior to the Use Permit becoming effective.
7. The number of new parking spaces shall be no more than fifteen (15).
8. The shuttle fleet shall be parked on-site within the designated parking spaces along the east and west ends of the property.
9. To provide adequate off-street parking for the existing use, the fleet inventory shall be limited to a maximum of fifteen (15) vehicles on site.
10. To provide adequate access and maneuvering area for fire and refuse trucks, including the fleet, the parking lot shall maintain a minimum twenty (20) foot wide, unobstructed drive aisle with adequate turning radii at all times.

14. Request a Use Permit to allow a community garden for **DOWNTOWN TEMPE MOBILE COMMUNITY GARDEN**, located at 701 South Mill Avenue. The applicant is the Downtown Tempe Authority. (PL180231)

Lee Jimenez, Senior Planner, gave the following presentation:

- Downtown Tempe Mobile Community Garden is proposed on two contiguous vacant lots, located on the southeast corner of South Mill Avenue and East 7th Street in the CC, City Center District, and a PAD, Planned Area Development Overlay.
- The mobile community garden will consist of two (2) roll-off containers, each sectioned into six (6) leasable garden beds, across two (2) contiguous vacant lots.
- The sectioned mobile containers will be in addition to the two (2) existing planter roll-offs located on the site; none of which require any grading to the site.
- Tempe Police Crime Prevention Unit reviewed the application and has no concerns; however, fencing is recommended as the garden increases in size and interest.
- To date, staff has received one email in support.
- Based on the information provided by the applicant, the public input received, and the analysis provided in the staff report, staff supports approval of the requested use permit and believes the request meets the required approval criteria and will conform to the recommended conditions in the staff report.

Ms. MacDonald invited the applicant Andy Jones and Julie Cat up to speak. And asked if they have anything to add to what Mr. Jimenez said.

Mr. Jones said that he does not have anything to add but that he is there to answer any questions that may arise. That he is excited about the project and that it is coming together very organically and that he moved to the downtown area and it rendered a garden previously in Clark Park and looked around downtown and wondered why they did not have a community garden down here. He thought through the process and realized that vacant property gets developed. When a community garden goes through the vacant property a year or two later the area gets developed then the space goes away. He already had roll off containers as a pop-up park divided them up so that when a development comes they can move the garden to another location.

Ms. MacDonald said that it was a cleaver ideal turn a vacant property into a community asset and it's a cool interim use.

Ms. MacDonald had a few questions such as are you going to merchandise it with benches to encourage interaction. Do you have plans to fence it in to protect the plants.

Mr. Jones said that this is a start he wants to see how it grows. He does hope to gain more seating to the site as it gains popularity and grows. He would like to get some type of fencing that is cost effective to the site. With Mill Avenue having some problems at times he would like to control that to some extent.

Ms. Macdonald stated that the traffic and the intensity of Mill Avenue is a blessing and a curse at times.

Mr. Jimenez stated that in reviewing the community garden with the police department they were not in favor of having benches on site that was because of after-hours having transit on site that would use the benches.

Ms. Cat pointed out that there are currently benches at the site.

Mr. Jones stated that there is benches at the site next to the two planters that are currently there.

Ms. MacDonald stated that was not thinking of condition the benches into the plans, but she thought it would be a cool ideal.

Mr. Jones stated that if they do any modifications that they will contact the city and make sure that they are in compliance.

Ms. MacDonald asked if they understand and agrees to follow the conditions of approval in the staff report.

Ms. MacDonald asked if there was any member of the public that would like to speak on the behalf please step forward.

Ms. Chloe Groom stated that she came to support the project. And that she suggests that there should be a fence. She has seen a few other business models and that sometimes there is a fence with a key access code. She feels that those are a lot more successful than the ones that are open to the public because we do have a lot of transit community that may dump things on the plants at any hour of the day. She believes that it is amazing module and has room to grow. Economically as we watch the trends to become a more health concise lifestyle the growth of whole foods and healthy restaurants will make this very successful. The things to consider is the afterhours spaces on Mill Avenue will also be used for sleeping. There will always be a transit community, so we need to protect the plants rather it is for culinary or medicinal purposes it would be beneficial for the applicant of the garden to access by key so that their efforts are not loss.

Ms. MacDonald stated that she does not want to put the fencing on as a condition of approval but that from the previous dialog the applicant is considering fencing.

Mr. Angel Fernandez stated that he saw the sign and immediately texted the group that we have to be there to support the measure. All three of them sitting back there are students of Herbalism and active gardeners. He also informed the hearing body study show that community gardening has been shown to reduce violence in the community. Mill avenue is in need of a luscious space where people can gather without intoxicating themselves and it can be host to all sorts of cool community growing events.

Ms. Shannon Stapleton stated that she would like to support this because she agrees that a space that provides plants and luscious beauty adds more value and allows room for people to grow and learn about things that can father enrich their lives. She proposes a question as to where the water is coming from.

Ms. MacDonald stated that is a good question and asked Mr. Jimenez or Mr. Jones if they would like to come up and speak on the matter.

Mr. Jimenez stated that they would be tapping into the city water using the meter at the community site.

Mr. Jones stated that they would be tapping into the city water part of a condition of approval and that it will be secure because they are hoping to go underground and try and come up under each roll off so that it can be locked where they keep the tools.

Ms. MacDonald noted that this request meets the criteria of the Zoning and Development Code, Section 6-309 D, Use Permit Criteria (*in italics*):

1. *Any significant increase in vehicular or pedestrian traffic*; Ms. MacDonald stated that this would not create an increase in vehicular or pedestrian traffic.
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions*; Ms. MacDonald did not believe that the project would create a nuisance from any of the items listed.
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan*; Ms. MacDonald did not believe that this project would deteriorate the neighborhood or downgrade property values
4. *Compatibility with existing surrounding structures and uses*; Ms. MacDonald did believe that the structure would be compatible with existing structures. She also noted that other similar projects have taken place in the neighborhood setting a precedent.
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public*; Ms. MacDonald did believe that the property owners would have adequate control of behavior.

Section 3-427 C Approval Criteria for Community Gardens (*in italics*):

1. *Compatibility with existing surroundings as it relates to the size of the community garden*; the size and layout of the existing and new roll-off containers scale well with the vacant lots and the adjacent properties.
2. *Adequate accessibility to the site and for public parking within the vicinity, which does not create a nuisance to the surrounding area or general public*; the site is accessible by light rail, bus, and neighborhood circulators. The downtown area provides adequate bicycle parking as well as metered on-street parking. Furthermore, the downtown parking standards does not require parking for outdoor uses.
3. *Evaluation of acceptable hours/days of operation, including outdoor retailing of produce*; hours of operation are proposed from dusk to dawn wherein adequate lighting levels will be provided for gardening and related retailing.
4. *Evaluation of acceptable products sold on-site*; as typically conditioned with all use permit applications, the operator will be required to obtain all Federal, State, County, and Municipal permits, licenses, and clearances.

DECISION:

Ms. MacDonald Approved the Use Permit (ZUP180088) to allow a community garden, for **DOWNTOWN TEMPE MOBILE COMMUNITY GARDEN**, located at 701 South Mill Avenue subject to the assigned Conditions of Approval as follows:

1. The Use Permit is valid only after required building permits for work on site have been obtained and the required inspections have been completed and a final inspection has been passed.
2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
4. Any intensification or expansion of use shall require a new Use Permit.
5. Hours of operation shall be limited from Dawn to Dusk, daily.
6. Irrigation system(s) shall require installation of a backflow preventer per International Plumbing Code, Chapter 6, Section 608.16.5. A building permit and inspection is required.

ANNOUNCEMENTS

- Vanessa MacDonald noted that the next Hearing Officer public hearing is scheduled for Tuesday, October 2, 2018 at 5:00 PM with a study session scheduled for 4:30 PM.

With no further business, the public hearing adjourned at 5:58 PM.

Prepared by: Brittainy Nelson
Reviewed by: Steve Abrahamson

Steve Abrahamson, Principal Planner
For Vanessa MacDonald, Hearing Officer

SA: bn